

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Jeffrey Mulinelli (S)	Team: Squad #1	CCRB Case #: 201607174	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 08/10/2016 7:30 PM, Monday, 08/15/2016	Location of Incident: Front of 278 Brook Avenue	Precinct: 40	18 Mo. SOL 2/10/2018	EO SOL 2/10/2018	
Date/Time CV Reported Mon, 08/15/2016 7:20 PM	CV Reported At: IAB	How CV Reported: E-mail	Date/Time Received at CCRB Mon, 08/22/2016 12:21 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Jason Korpinski	1591	942787	PSA 7
2. POM Fermin Bueno	10254	948710	PSA 7

Officer(s)	Allegation	Investigator Recommendation
A.POM Fermin Bueno	Force: Police Officer Fermin Bueno used a chokehold against § 87(2)(b)	
B.POM Fermin Bueno	Force: Police Officer Fermin Bueno used physical force against § 87(2)(b)	
C.POM Fermin Bueno	Force: Police Officer Fermin Bueno used physical force against § 87(2)(b)	
§ 87(4-b), § 87(2)(g)		
§ 87(4-b), § 87(2)(g)		
§ 87(4-b), § 87(2)(g)		
§ 87(4-b), § 87(2)(g)		
§ 87(4-b), § 87(2)(g)		

Case Summary

This case stems from a video posted on Facebook and discovered by NYPD Community Affairs. It was forwarded to the CCRB via log number 16-2937 on August 22, 2016. The video was analyzed by IAB, who then provided an incident location as well as a vehicle number and command assignment for the unmarked black van used by the officers. However, upon receipt by the CCRB, the case had no identified victim, officers, or date of incident [01 Board Review]. The original one minute and twenty-four second video was downloaded by CCRB MIS and is attached below [02 Board Review].



201607174_20160823_0826_DM.mp4

A search of BADS produced no results for an arrest in the vicinity of the incident location featured on the video. The DAT log, C-summons log, and SPIA had no matching incidents [see IAs]. Through officer interviews, it was ultimately discovered that PO Fermin Bueno and Sgt. Jason Kopolinski, both of PSA 7, were the officers captured in the video, and that the summons issued to the victim, § 87(2)(b) listed the incident location as the nearest NYCHA address, 400 Brook Avenue in the Bronx, rather than the actual incident location, 278 Brook Avenue. The above reasons contributed to this case being older than 90 days.

On August 10, 2016, at approximately 7:30 p.m., PO Bueno and Sgt. Kopolinski, who were working in the PSA 7 Conditions Unit, were patrolling in the area of Brook Avenue and East 139th Street in the Bronx when they encountered § 87(2)(b) reportedly initiated contact with the officers as he cursed at and threatened them. Following a brief exchange in which the officers ordered § 87(2)(b) to leave the scene, § 87(2)(b) allegedly threw a cup of coffee on PO Bueno's crotch.

PO Bueno and Sgt. Kopolinski grabbed § 87(2)(b)'s arms. PO Bueno quickly moved behind § 87(2)(b) and executed a chokehold by wrapping his right arm over § 87(2)(b)'s right shoulder, across his throat, and extending his right hand to § 87(2)(b)'s left shoulder (**Allegation A**). PO Bueno lifted § 87(2)(b) off of his feet in this position, walked him toward the van, and placed him in handcuffs.

PO Bueno, along with Sgt. Kopolinski, escorted § 87(2)(b) to the side of the van to place him inside. As the men reached the rear passengers' door of the van, PO Bueno pulled § 87(2)(b) against the closed door (**Allegation B**). PO Bueno then entered the van with § 87(2)(b) who was seated in a rear seat. PO Bueno allegedly struck § 87(2)(b) while in the rear of the van (**Allegation C**).

§ 87(2)(b) was transported to the PSA 7 stationhouse and released with a summons for disorderly conduct. The subsection of this offense was not listed, and the disposition of the summons is unknown.

An attorney was consulted regarding all allegations and OMNs.

Mediation, Civil and Criminal Histories

- § 87(2)(b) was reached via phone several times but declined to provide a statement to the CCRB or participate in the case in any fashion [03 Board Review].
- As of April 24, 2017, no Notice of Claim has been filed in regard to this incident [04 Board Review].

- § 87(2)(b)
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Civilian and Officer CCRB Histories

- This is the first CCRB case involving § 87(2)(b) [06 Board Review].
- This is the third CCRB case filed against PO Bueno in his six year career. He was the subject of physical force allegations in cases 201214383 and 201404809, both of which were closed as complainant uncooperative.
- This is the ninth CCRB case against Sgt. Korpolski in his 10 year tenure. § 87(4-b), § 87(2)(g)
[REDACTED] A retaliatory arrest allegation was also substantiated against him in 201603587.

Potential Issues

- Aside from limited comments, § 87(2)(b) refused to provide a statement to the CCRB. He stated that he saw no potential benefit from participating in an investigation and that he believed that the only possible outcome was retaliation from the officers. As such, the scope of information available to the investigation was primarily limited to the video and officer statements.

Status of IAB Investigation

- As noted above, this case was forwarded the CCRB by the Internal Affairs Bureau on August 22, 2016. The IAB case was assigned to Lt. Richard Healey, who stated on September 2, 2016 that IAB had not identified the officers or civilians in the video, and that the case was closed. Following the CCRB's identification of the subject officers and victim, Lt. Healy was advised. He stated that his unit had not reopened and did not intend to reopen the IAB case.

Findings and Recommendations

Allegations not pleaded

- **Abuse of Authority: Stop.**
The video begins with § 87(2)(b) already in a contentious interaction with the officers. It offers no evidence concerning a potential reason for the stop or who initiated the interaction. Due to the fact that no sworn civilian testimony was provided in regard to this allegation, it was not pleaded.

Allegation A – Force: Police Officer Fermin Bueno used a chokehold against § 87(2)(b)

The video opens with § 87(2)(b) and PO Bueno facing one another on the sidewalk and conversing. PO Bueno is slightly to the right and in front of § 87(2)(b) and Sgt. Kopolinski is standing to PO Bueno's left. In the first five seconds of the video, § 87(2)(b) talks about whether a handcuff hurt him, and PO Bueno tells § 87(2)(b) to move on at least three times before warning § 87(2)(b) that he could be "locked up." § 87(2)(b) responds by asking if he looks like he cares if he gets locked up. At the 11 second mark, PO Bueno grabs § 87(2)(b)'s left arm and moves behind him while Sgt. Kopolinski grabs § 87(2)(b)'s right arm. A white cup is seen in § 87(2)(b)'s left hand at the 12 second mark once PO Bueno is behind him. This cup falls to the ground on § 87(2)(b)'s left side at the 13 second mark.

As the aforementioned cup falls to the ground, PO Bueno is seen using his right hand to push on the back of § 87(2)(b)'s neck. § 87(2)(b) bends forward briefly before straightening up and reaching with his left hand across his body and toward PO Bueno's right hand, which is still on the back of his neck. § 87(2)(b)'s hand does not contact that of PO Bueno until PO Bueno moves his right hand and arm to the front of § 87(2)(b)'s body at the 14 second mark. As PO Bueno transitions the position of his arm between the 14 second mark and 15 second mark, his arm is held horizontally across § 87(2)(b)'s chest and shoulders. At the 15 second mark through the 17 second mark, PO Bueno's right elbow is on top of § 87(2)(b)'s right shoulder, and his right hand is touching the front of § 87(2)(b)'s left shoulder. His right forearm appears to be under § 87(2)(b)'s chin and across the front of his neck at this time. Photos 1 through 4, which were taken as snapshots from the video at the 14 through 16 second marks, capture the transition and ultimate positioning of PO Bueno's arm as described above. A snapshot taken at the 17 second mark (photo #5) shows that PO Bueno lifted § 87(2)(b) off of his feet using this maneuver as he walked § 87(2)(b) toward the van. Further, a snapshot taken at the 18 second of the video (photo #6) captures PO Bueno's right forearm under § 87(2)(b)'s jaw and in the area of the front of his neck as they reach the van. § 87(2)(b) is placed against the van by PO Bueno between the 18 and 19 second marks. At the 19 second mark, PO Bueno's right hand is observed holding the right side of § 87(2)(b)'s neck. He releases this hold, which is captured in Photo #7, by the 21 second mark, at which point he begins handcuffing § 87(2)(b) [see photos, 11 Board Review].

As the actions described above took place, Sgt. Kopolinski maintained hold of § 87(2)(b)'s right arm and followed § 87(2)(b) and PO Bueno. He never changed the positioning of his grips, which were on the wrist and bicep area of § 87(2)(b)'s right arm, or escalated his use of force [02 Board Review].



2017-04-24_9-56-52.mp4

§ 87(2)(b) was first reached via phone on January 30, 2017. At that time, he did not seem aware of the existence of this complaint. He initially did not recall this incident specifically, stating that he is frequently harassed by officers. When provided with the incident location and informed that the incident involved two officers in a black van, § 87(2)(b) responded that the officers grabbed him up and beat him up. He then stated that he was at work and could not speak further.

§ 87(2)(b) was reached via phone again on February 27, 2017, but maintained the same unwillingness to participate in the investigation due to a fear of retaliation from the officers. While speaking about the incident briefly, § 87(2)(b) described that an officer followed him for several blocks for a reason which he did not know. An officer then got out of the car, grabbed § 87(2)(b) threw him in a car, and “beat [him] up” [03 Board Review].

Both PO Bueno and Sgt. Korpinski acknowledged their participation in this incident and testified that the interaction was initiated by § 87(2)(b) who yelled obscenities and threats at the officers as they sat in their van. Neither officer testified to having any intent to interact with § 87(2)(b) prior to his engaging them. PO Bueno and Sgt. Korpinski also consistently stated that § 87(2)(b) refused several orders to leave the scene before any physical action was taken [07-08 Board Review].

According to PO Bueno, § 87(2)(b) became louder after refusing the orders to leave, and he “took a stance” by advancing and leaning toward PO Bueno. These actions suggested to PO Bueno that § 87(2)(b) was unwilling to move, would not listen, and that he was willing to fight. He added that § 87(2)(b) bladed his body, and that he appeared to be ready to “take action.” PO Bueno’s testimony concerning these potential physical threats was not corroborated by Sgt. Korpinski, who testified only to verbal threats made by § 87(2)(b). Although he stated that he thought that § 87(2)(b) whose verbal threatening of officers seemed unprompted, may not have been in the right frame of mind and may have been in need of an ambulance, he made no mention of any safety concerns resulting from § 87(2)(b)’s physical behavior.

PO Bueno testified that he spoke with § 87(2)(b) for one to two minutes before moving in to handcuff him. As PO Bueno was about to place a handcuff on him, § 87(2)(b) threw a paper cup of hot coffee on PO Bueno’s lap. PO Bueno suffered no injury from this action. He did not remember if the coffee was in the same hand he was trying to handcuff. As this handcuffing process began, Sgt. Korpinski was standing to the left of PO Bueno and in front of § 87(2)(b). § 87(2)(b) struggled a little bit by tensing his body as PO Bueno secured a handcuff on one of § 87(2)(b)’s arms, possibly his right. Sgt. Korpinski held § 87(2)(b)’s other arm but had not secured a handcuff on it.

In response to the previously described resistance from § 87(2)(b) PO Bueno moved around and behind § 87(2)(b) placed his right arm over § 87(2)(b)’s right shoulder, and grabbed § 87(2)(b) by his left armpit. He denied making any contact with the front of § 87(2)(b)’s neck at this time. PO Bueno felt that the best way to control § 87(2)(b) at this time was to go to his back, as this would aid in control and reduce the possibility of § 87(2)(b) reaching for his gun, and he took no other measures before moving to said position. When asked if this particular maneuver was taught to him at the Police Academy, PO Bueno repeated that the move made sense tactically due to the issue concerning his gun. He then acknowledged that the maneuver was not taught at the Police Academy.

PO Bueno testified that he used the aforementioned grip to pick § 87(2)(b) up. He added that he realized that he was able to overpower § 87(2)(b). He thought that § 87(2)(b) may

have grabbed his arm at this point, though he was not certain. PO Bueno denied using a chokehold against § 87(2)(b) at any point during this interaction, nor did § 87(2)(b) complain that he had done so or that he had restricted his breathing in any manner. PO Bueno stated that he did not learn that he had incidentally restricted § 87(2)(b)'s breathing. PO Bueno stated that he attempted to handcuff § 87(2)(b) by pulling his arms together prior to placing him against the van, but § 87(2)(b) "wiggled" to get out of his grip. PO Bueno then placed § 87(2)(b) against the van and handcuffed him.

Following his initial statement, PO Bueno reviewed the video located in IA #10 of the digital case file. He identified himself as the officer on the right and Sgt. Korpinski on the left. PO Bueno explained that his initial intent in pushing on the back of § 87(2)(b)'s neck was to "try to throw him to the floor." He was going to do this because he felt tension and resisting, and his first reaction was to "throw him to the floor." However, in a split second decision, PO Bueno decided that it was unwise to throw § 87(2)(b) to the ground and did not do so. He clarified that it was not that he was unable to do so, but rather that he thought better of it.

The video was paused for PO Bueno at the 15 second mark, at which time his right arm is seen wrapped around the front of § 87(2)(b). Specifically, PO Bueno's right elbow is above § 87(2)(b)'s right shoulder, and PO Bueno's right hand is on § 87(2)(b)'s left shoulder, with his forearm appearing to be under § 87(2)(b)'s chin. PO Bueno stated that the image did not refresh his memory of whether he contacted the front of § 87(2)(b)'s neck. He added that he did not feel this contact with § 87(2)(b)'s neck because he leaned § 87(2)(b)'s body backward and toward his own when he lifted him up [07 Board Review].

In his initial statement, Sgt. Korpinski stated that he and PO Bueno asked § 87(2)(b) to place his hands behind his back, at which point § 87(2)(b) threw a cup of hot coffee on PO Bueno's crotch. Both officers grabbed § 87(2)(b)'s arms, and that § 87(2)(b) stiffened his body and continued making verbal threats. The officers pulled § 87(2)(b)'s arms behind his back. Sgt. Korpinski described this action as not being very forceful because § 87(2)(b) was not fighting the officers aside from stiffening his body. The officers then handcuffed § 87(2)(b) at the rear of their van. When asked how § 87(2)(b) came to be at the back of the van, Sgt. Korpinski revealed that the officers had walked him there. Sgt. Korpinski did not remember § 87(2)(b) offering any resistance as he was walked from the sidewalk to the rear of the van. Although he acknowledged that the officers "were not treating him with light gloves" at that point because they planned on bringing him to the stationhouse, Sgt. Korpinski denied that PO Bueno used a chokehold against § 87(2)(b) during the handcuffing process. He added that PO Bueno did not wrap his arm around § 87(2)(b)'s neck before handcuffing him. According to Sgt. Korpinski, no complaint of such an action was made.

Sgt. Korpinski was also provided with the opportunity to review the video in IA #10. The portion between the 14 and 19 second marks, the contents of which are described at length above, was reviewed several times. Sgt. Korpinski acknowledged observing the actions taken by PO Bueno and captured on the video and revealed that § 87(2)(b) was still struggling to avoid having his arms placed behind his back at this time. Sgt. Korpinski was asked whether he issued any instructions to PO Bueno regarding the placement of his hands or arm, to which he replied, "At this point, he wasn't listening to us, so..." The investigator clarified his question and asked

Sgt. Korpolski if he, as PO Bueno's supervisor, issued any instructions concerning the placement of PO Bueno's arm or hands. Sgt. Korpolski answered that, at that point, the officers were trying to get the individual's hands behind his back to handcuff him, a process which took several seconds. Asked whether this most recent response constituted a yes or a no, Sgt. Korpolski replied, "He was still talking at the time. He wasn't choking him. He was still resisting us." However, Sgt. Korpolski later stated that he did not know why § 87(2)(b) was handcuffed against the van rather than in the open. Finally, after two follow-up questions concerning this matter, Sgt. Korpolski stated that he did not issue any instructions to PO Bueno. He maintained that § 87(2)(b) made no complaints of a chokehold being used against him or of any difficulty breathing [08 Board Review].

PO Bueno issued a summons to § 87(2)(b) for disorderly conduct. A subsection was not noted. Statements recorded on the summons by PO Bueno concerning § 87(2)(b)'s refusal to leave the scene were consistent with the officers' CCRB testimonies [09 Board Review].

Patrol Guide procedure 221-01 defines a chokehold as including but not being limited to any pressure applied to the throat or windpipe, which may prevent or hinder breathing or reduce the intake of air. According to this procedure, the use of chokeholds by members of the service is prohibited barring exceptional or exigent circumstances [10 Board Review].

§ 87(2)(g)
[REDACTED]

Allegation B – Force: Police Officer Fermin Bueno used physical force against § 87(2)(b)

The video shows minimal, if any, resistance from § 87(2)(b) from the point at which PO Bueno initiates the handcuffing process at the ten second mark. A cup is seen falling from § 87(2)(b)'s hand shortly after PO Bueno pulls that same hand behind § 87(2)(b)'s back. The cup falls to § 87(2)(b)'s left and away from both men. PO Bueno cited the throwing of the coffee, as well as stiffening and wiggling of the body, as examples of § 87(2)(b)'s resistance during the handcuffing process. However, the video shows little, if any, resistance from § 87(2)(b). As § 87(2)(b) is moved from the sidewalk to the officers' van in the manner described in Allegation A, Sgt. Korpolski takes no action aside from following while holding § 87(2)(b)'s right arm. Upon arriving at the van, PO Bueno begins to rear-handcuff § 87(2)(b). This process begins at the 21 second mark and ends at the 29 second mark, at which point the officers begin walking § 87(2)(b) to the passenger's side of the van.

At the 30 second mark, § 87(2)(b) appears to trip over the legs of the officers, who are each holding one of his arms and walking slightly behind him. He appears to be walking normally one second later. At the 32 second mark, PO Bueno appears to plant his feet, rears back, and pulls § 87(2)(b)

§ 87(2)(b) into a hard left turn and into the side of the van. § 87(2)(b)'s body strikes the van on the rearmost passenger door. Sgt. Koroplinski takes no action at this time aside from opening the other rear passenger door. He is not heard issuing any commands. The officers then move § 87(2)(b) back a step before PO Bueno opens the rearmost passenger's door and places § 87(2)(b) inside [02 Board Review].



2017-04-24_10-18-00.mp4

As noted above, § 87(2)(b) offered little information to the investigation, stating only that he was grabbed up and beaten up [03 Board Review].

As noted above, PO Bueno testified that § 87(2)(b) tensed his body and later wiggled his body in an attempt to get out of PO Bueno's grip. However, PO Bueno used no force at this time aside from pulling § 87(2)(b)'s arms behind his back, and it took him only seconds to place § 87(2)(b) in handcuffs. In his initial statement, PO Bueno acknowledged walking § 87(2)(b) to and placing him against the rearmost of the rear double doors on the passenger's side of the van so that he could open the other rear door, but he did not remember whether he or any other officer pushed § 87(2)(b) against the van at any point. He made no mention of any resistance offered by § 87(2)(b) as he was escorted to the passenger's side of the van.

Upon reviewing the video, PO Bueno stated that § 87(2)(b) was tripping prior to being placed against the van, and that this occurred because § 87(2)(b) was trying to get away from PO Bueno. PO Bueno revealed that his forceful placement of § 87(2)(b) against the van was a corrective action in response to § 87(2)(b)'s attempts to get away [07 Board Review].

Sgt. Korpolinski acknowledged that § 87(2)(b) was placed into the rear of the van through its passenger's side doors. He, unlike PO Bueno, stated that § 87(2)(b) initially refused to enter the van and "threw elbows" while outside of it. Sgt. Korpolinski did not remember if any officer was struck by § 87(2)(b). The officers overcame this resistance by holding onto § 87(2)(b)'s body and then pushing him into the rear seat. He made no mention of any officer striking § 87(2)(b) against the van's exterior.

Like PO Bueno, Sgt. Korpolinski reviewed the video above. Upon seeing PO Bueno force § 87(2)(b) into the rearmost door as Sgt. Korpolinski begins to open the other door to the rear passenger's compartment, Sgt. Korpolinski stated that the forceful movement and jerky motions were attributable to § 87(2)(b)'s continued resistance. He clarified that § 87(2)(b) tried to push PO Bueno and was generally failing to comply [08 Board Review].

Patrol Guide procedure 221-01 requires that officers use only the reasonable force necessary to gain control or custody of a subject [10 Board Review].

§ 87(2)(g)

§ 87(2)(g)

Allegation C – Force: Police Officer Fermin Bueno used physical force against § 87(2)(b)

In the final third of the video, after § 87(2)(b) and PO Bueno have entered the rear passenger compartment of the van, two male voices are heard saying that “they’re hitting him in the back.” This allegation is repeated multiple times. The unidentified individual recording the video approached the van and attempts to film through its rear windows, but there is signification glare and reflection from the tinted windows. From the 1:00 to 1:05 minute mark, the outlines of two individuals are seen inside the van; one appears to be standing, and the other is seated. The individual on the right, who appears to be standing, is seen raising and lowering his arm, which appears to be bent at the elbow, several times. It is unclear whether this individual’s hand is open or closed at the time these motions are made or whether contact was made with anyone or anything.

Following the previously described portion of the video, the recorder moves to the driver’s side of the van. At the 1:13 minute mark, a raised voice, which seems to be coming from inside the van, is heard saying, “...keep looking at me, man. I’m a working man. You did that shit four times.” Others in the vicinity of the recorder begin talking, and then the van starts. No further statements or actions believed to be associated with § 87(2)(b) or the officers are observed [02 Board Review].



2017-04-24_15-14-14.mp4

As noted above, § 87(2)(b) provided only a brief description of the incident via phone, stating that an officer threw him in a car and “beat [him] up” [03 Board Review].

PO Bueno testified that he followed § 87(2)(b) into the van, and that there were no other officers in the rear passenger compartment at that time. He searched § 87(2)(b) once in the van. As he did so, § 87(2)(b) used his legs to push or thrust against PO Bueno’s legs. PO Bueno clarified that this motion was not an actual kick. He suffered no injuries as a result. PO Bueno revealed that he yelled loudly at § 87(2)(b) advising him to stop kicking or there would be problems or that the incident could turn into an arrest rather than a summons. He denied punching or striking § 87(2)(b) in any manner while inside the van. § 87(2)(b) eventually calmed down, but not before telling PO Bueno to wait until the handcuffs came off.

After reviewing the video, PO Bueno maintained that he did not strike § 87(2)(b) inside the van. He indicated that the point at which the camera focused on the van’s windows coincided with when he was admonishing § 87(2)(b) for his physical conduct. PO Bueno also revealed

that he was motioning with his hands as he yelled loudly at § 87(2)(b) [REDACTED]. He denied striking § 87(2)(b) [REDACTED] with the hand seen moving in the video or in any other manner [07 Board Review].

Like PO Bueno, Sgt. Kopolinski stated that no punches, strikes, or force of any kind were used against § 87(2)(b) [REDACTED] inside the van. He maintained this assertion after video and stated that he believed that PO Bueno was gesturing with his hand as he spoke with § 87(2)(b) [REDACTED] inside the van. At the conclusion of his interview, Sgt. Kopolinski denied observing or learning that any force was used against § 87(2)(b) [REDACTED] and he added that § 87(2)(b) [REDACTED] made no complaints of being hit [08 Board Review].

§ 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED]
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§ 87(4-b), § 87(2)(g) [REDACTED]
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§ 87(4-b), § 87(2)(g)

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Squad: 1

Investigator: _____
Signature Print Date

Squad Leader: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date